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15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

17 CITY OF COLTON, a California
18 municipal corporation,

19 Plaintiff,

20 v.

21 AMERICAN PROMOTIONAL
22 EVENTS, INC., et al.

23 Defendants.

24 AND CONSOLIDATED ACTIONS

CASE NO. ED CV 09-01864 PSG (SSx)

[Consolidated with Case Nos. CV 09-6630 PSG (SSx), CV 09-06632 PSG (SSx), CV 09-07501 PSG (SSx), CV 09-07508 PSG (SSx), CV 10-824 PSG (SSx) and CV 05-01479 PSG (SSx)]

CONSENT DECREE

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Consent Decree

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a complaint in this matter pursuant to Sections 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607 (“CERCLA”), and Section 7003 of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6973, seeking injunctive relief and reimbursement of response costs incurred by EPA and the United States Department of Justice for response actions at the B.F. Goodrich Superfund Site in Rialto, California. Other parties have also filed CERCLA and/or state law claims in cases consolidated with the United States’ case (collectively, the “Consolidated Federal Action”).

B. Defendants Ken Thompson, Inc.; KTI, Incorporated; Pipeline Carriers, Inc.; and Rialto Concrete Products, Inc. (collectively, “Settling Defendants” as defined in Section IV (Definitions)), are entities which are named as defendants in one or more of the complaints referenced in Paragraph I.A. Settling Defendants do not admit, and specifically deny: (1) any liability arising out of the transactions or occurrences alleged in the claims or deemed by the Court in the Consolidated Federal Action; and (2) that the release or threatened release of Waste Material at or from the B.F. Goodrich Superfund Site or the RABSP (as defined in Section IV (Definitions)) constitutes, contributed to, or caused an imminent or substantial endangerment to the public health or welfare or the environment.

C. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), any EPA existing or future removal or remedial decision and the actions to be performed by Settling Defendants under this Consent Decree shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record.

1 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED:

2 **II. JURISDICTION**

3 1. This Court has jurisdiction over the subject matter of this action
4 pursuant to 28 U.S.C. §§ 1331 and 1345; 42 U.S.C. §§ 6973(a), 9607, and 9613(b);
5 and also has personal jurisdiction over Settling Defendants. Solely for the
6 purposes of this Consent Decree and the underlying complaints, Settling
7 Defendants waive all objections and defenses that they may have to jurisdiction of
8 the Court or to venue in this District. Settling Defendants shall not challenge entry
9 or the terms of this Consent Decree or this Court's jurisdiction to enter and enforce
10 this Consent Decree.
11

12 **III. PARTIES BOUND**

13 2. This Consent Decree is binding upon the United States and upon
14 Settling Defendants and their heirs, successors, and assigns. Any change in
15 ownership or corporate or other legal status, including, but not limited to, any
16 transfer of assets or real or personal property, shall in no way alter the status or
17 responsibilities of Settling Defendants under this Consent Decree.
18

19 **IV. DEFINITIONS**

20 3. Unless otherwise expressly provided in this Consent Decree, terms
21 used in this Consent Decree that are defined in CERCLA or in regulations
22 promulgated under CERCLA shall have the meaning assigned to them in CERCLA
23 or in such regulations. Whenever terms listed below are used in this Consent
24 Decree or in any appendix attached hereto, the following definitions shall apply:

25 "160-Acre Area" shall mean the area located in San Bernardino County that
26 is bounded by West Casa Grande Drive on the north, Locust Avenue on the east,
27 Alder Avenue on the west, and an extension of Summit Avenue on the south. The
28 160-Acre Area is depicted generally on the map included in Appendix A.

1 “2010 Record of Decision” or “2010 ROD” shall mean the document
2 entitled “USEPA Superfund Interim Action Record of Decision” relating to the
3 Source Area Operable Unit, B.F. Goodrich Superfund Site, San Bernardino
4 County, CA, EPA ID: CAN000905945, dated September 30, 2010, signed by the
5 Assistant Director, Superfund Division, EPA Region 9, and all attachments thereto.

6 “Basin Contaminants” shall mean any type of perchlorate; trichloroethylene
7 (“TCE”); carbon tetrachloride; chloroform; or methylene chloride; including any
8 breakdown or “daughter” products of the foregoing.

9 “B.F. Goodrich Superfund Site” shall mean the B.F. Goodrich Superfund
10 Site in San Bernardino County, California, which includes the 160-Acre Area and
11 all areas where contamination from the 160-Acre Area otherwise comes to be
12 located.

13 “B.F. Goodrich Special Account” shall mean the special account, within the
14 EPA Hazardous Substances Superfund, established for the B.F. Goodrich
15 Superfund Site (Site/Spill ID Number 09JW) by EPA pursuant to Section
16 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

17 “CERCLA” shall mean the Comprehensive Environmental Response,
18 Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

19 “Certification of Completion of the Final Remedial Action” shall mean the
20 certification of completion of the remedial action associated with the Final Record
21 of Decision for the B.F. Goodrich Superfund Site.

22 “Consent Decree” shall mean this Consent Decree and all appendices
23 attached hereto. In the event of conflict between this Consent Decree and any
24 appendix, this Consent Decree shall control.

25 “Consolidated Federal Action” shall mean *City of Colton v. American*
26 *Promotional Events, Inc., et al.*, Case No. ED CV 09-01864 PSG (SSx); *Goodrich*
27 *Corporation v. Chung Ming Wong, et al.*, Case No. CV 09-6630 PSG (SSx);
28

1 *County of San Bernardino, et al., v. Tung Chun Co., et al.*, Case No. CV 09-06632
2 PSG (SSx); *City of Rialto and Rialto Utility Authority v. United States Department*
3 *of Defense, et al.*, Case No. CV 09-7501 PSG (SSx); and *Emhart Industries, Inc. v.*
4 *American Promotional Events, Inc.-West, et al.*, Case No. CV 09-07508 PSG
5 (SSx), all of which were consolidated pursuant to an order issued on January 20,
6 2010; and *United States of America v. Goodrich Corporation, et al.*, Case No. 10-
7 00824 PSG (SSx), which was consolidated with the previously consolidated cases
8 pursuant to an order issued on June 3, 2010; and *City of Colton v. American*
9 *Promotional Events, Inc., et al.*, Case No. ED CV 05-01479 PSG (SSx).

10 “County” shall mean the County of San Bernardino and any of its present,
11 former, or future subdivisions, departments, commissions, agencies, or
12 instrumentalities.
13

14 “County Property” shall mean the property known as the Mid Valley
15 Sanitary Landfill, which is currently owned by the County of San Bernardino,
16 including those areas currently leased to Robertson’s Ready Mix. The County
17 Property is bounded by Summit Avenue on the north, generally by Alder Avenue
18 on the east (until Alder Avenue terminates at or within the Robertson’s Ready Mix
19 leasehold), generally by the municipal boundaries of the Cities of Fontana and
20 Rialto on the west except for a strip of land located in the City of Fontana, and by
21 Casmalia Street on the south. The County Property is depicted generally on the
22 map included in Appendix A.

23 “Day” or “day” shall mean a calendar day unless expressly stated to be a
24 working day. The term “working day” shall mean a day other than a Saturday,
25 Sunday, or federal holiday. In computing any period of time under this Consent
26 Decree, where the last day would fall on a Saturday, Sunday, or federal holiday,
27 the period shall run until the close of business of the next working day.

28 “DOJ” shall mean the United States Department of Justice and its successor

1 departments, agencies, or instrumentalities.

2 “Effective Date” shall mean the date upon which this Consent Decree is
3 entered by the District Court as recorded on the District Court docket, or, if the
4 District Court instead issues an order approving the Consent Decree, the date such
5 order is recorded on the District Court docket, whichever occurs first.

6 “EPA” shall mean the United States Environmental Protection Agency and
7 its successor departments, agencies, or instrumentalities.

8 “EPA Hazardous Substance Superfund” shall mean the Hazardous
9 Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

10 “Federal Contract” means any prime contract, subcontract, or any other
11 agreement transferring value between a party to this Consent Decree and a
12 department, agency, or instrumentality of the United States, including but not
13 limited to contracts for goods or services, grants, and cooperative agreements. The
14 term “Federal Contract” does not include this Consent Decree.

15 “Final Record of Decision” shall mean the final Record of Decision (and all
16 attachments) for the B.F. Goodrich Superfund Site that will be signed by EPA in
17 the future, and after lodging of this Consent Decree.

18 “Final Remedial Action” shall mean activities associated with implementing
19 the Final Record of Decision.

20 “Further Settlor” shall mean any party to the Consolidated Federal Action
21 and not a signatory to this Consent Decree, with whom the United States, on behalf
22 of EPA, reaches or has reached a final settlement.

23 “Interest” shall mean interest at the rate specified for interest on investments
24 of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507,
25 compounded annually on October 1 of each year, in accordance with 42 U.S.C.
26 § 9607(a). The applicable rate of interest shall be the rate in effect at the time the
27 interest accrues. The rate of interest is subject to change on October 1 of each
28

1 year.

2 “Institutional Controls” or “ICs” shall mean Proprietary Controls and state
3 or local laws, regulations, ordinances, zoning restrictions, or other governmental
4 controls or notices that: (a) limit land, water, and/or resource use to minimize the
5 potential for human exposure to Waste Material at or in connection with the Site;
6 (b) limit land, water, and/or resource use to implement, ensure non-interference
7 with, or ensure the protectiveness of the remedial action; and/or (c) provide
8 information intended to modify or guide human behavior at or in connection with
9 the Site.

10 “KTI Property” shall mean those parcels of the land located in the 160-Acre
11 Area in the City of Rialto, County of San Bernardino, State of California with the
12 Assessor’s Parcel Numbers of APN 0239-192-05-0000, APN 0239-192-11-0000,
13 APN 0239-192-19-0000, APN 0239-192-09-0000, and APN 0239-192-20-0000, as
14 more specifically described and depicted in Appendix B to this Consent Decree.

15 “Paragraph” shall mean a portion of this Consent Decree identified by an
16 Arabic numeral or an upper or lower case letter.

17 “Parties” shall mean the United States and the Settling Defendants.

18 “Plaintiffs” shall mean the United States, on behalf of EPA.

19 “Proprietary Controls” shall mean easements or covenants running with the
20 land that: (a) limit land, water, or resource use and/or provide access rights and (b)
21 are created pursuant to common law or statutory law by an instrument that is
22 recorded by the owner in the appropriate land records office.

23 “RABSP” shall mean the parcel of land originally containing the former
24 Rialto Ammunition Backup Storage Point, located in San Bernardino County,
25 California. The 160-Acre Area is within the geographic area of the RABSP. The
26 RABSP is depicted generally on the map included in Appendix A.

27 “RABSP Site” shall mean the RABSP and all areas where contamination
28

1 from the RABSP otherwise comes to be located.

2 “RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C.
3 §§ 6901 *et seq.* (also known as the Resource Conservation and Recovery Act).

4 “Section” shall mean a portion of this Consent Decree identified by a Roman
5 numeral.

6 “Settling Defendants” shall mean Ken Thompson, Inc.; KTI, Incorporated;
7 Pipeline Carriers, Inc.; and Rialto Concrete Products, Inc. and includes past and
8 current officers and employees of these entities acting in the course and scope of
9 their employment, as well as successors and assigns of these entities.

10 “Settling Federal Agencies” shall mean any federal agency, department, or
11 instrumentality named or alleged to be liable for contamination in the Consolidated
12 Federal Action, including but not limited to the United States Army, the
13 Department of the Navy, the United States Air Force, the United States
14 Department of Defense, the Farm Credit Administration, the United States
15 Customs and Border Protection, the National Aeronautics and Space
16 Administration, the United States Department of Energy, Lawrence Livermore
17 National Laboratory, the United States Forest Service, and any other federal entity
18 that is alleged to have transported, disposed of, or released any Waste Material
19 within the area encompassed by the RABSP Area, as depicted in Appendix A, and
20 any of their predecessors or successors.

21 “State” shall mean the State of California.

22 “Stonehurst Property” shall mean the approximate 5-acre property in the
23 County of San Bernardino, County APNs 1133-07-105, 1133-07-106, and 1133-
24 07-107, collectively, located at 2298 West Stonehurst Drive, Rialto, California.
25 The Stonehurst Property is depicted generally on the map included in Appendix A.
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1 “Transfer” shall mean shall mean to sell, assign, convey, lease, mortgage, or
2 grant a security interest in, or where used as a noun, a sale, assignment,
3 conveyance, or other disposition of any interest by operation of law or otherwise.

4 “United States” shall mean the United States of America and each
5 department, agency, and instrumentality of the United States, specifically including
6 EPA and the Settling Federal Agencies.

7 “Waste Material” shall mean: (a) any hazardous substance under Section
8 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant
9 under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any “solid waste”
10 under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any “hazardous
11 waste” under California law, including California Health & Safety Code §§ 25100
12 *et seq.*

13
14 “West Side Area” shall mean the County Property and the Stonehurst
15 Property. The West Side Area is depicted generally on the map included in
16 Appendix A.

17 “West Side Site” shall mean the West Side Area and all areas where TCE
18 and perchlorate contamination from the West Side Area otherwise comes to be
19 located.

20 **V. STATEMENT OF PURPOSE**

21 4. By entering into this Consent Decree, the mutual objectives of the
22 Parties are to avoid difficult and prolonged litigation and resolve claims as set forth
23 herein.

24 **VI. SETTLEMENT OF RESPONSE COSTS**

25 **5. Payments**

26 Settling Defendants shall pay two million eight hundred thousand dollars
27 (\$2,800,000) to the United States on behalf of EPA in three payments, on the
28

1 following schedule and in accordance with payment instructions as directed in
2 Paragraph 6, below. The total amount of each payment to be paid by Settling
3 Defendants pursuant to this Section shall be deposited by EPA in the B.F.
4 Goodrich Superfund Site Special Account (Site/Spill ID Number 09JW) to be
5 retained and used to conduct or finance response actions at or in connection with
6 the Site, which may include transferring all or some of those payments to a
7 disbursement special account associated with the Final Remedial Action, and/or to
8 be transferred by EPA to the EPA Hazardous Substance Superfund.

9 a. Within ten (10) working days after the Effective Date, or ten
10 (10) working days after receiving payment instructions from the United States on
11 behalf of EPA, whichever is later, Settling Defendants shall pay nine hundred
12 thirty-three thousand three hundred thirty-four dollars (\$933,334) to the United
13 States.

14 b. Within one (1) year after the Effective Date, Settling
15 Defendants shall pay to the United States nine hundred thirty-three thousand three
16 hundred thirty-three dollars (\$933,333), plus Interest on that amount calculated
17 from the 30th Day after the Effective Date until the date of the payment. The
18 United States shall provide Settling Defendants with information on the amount of
19 Interest due thirty (30) Days before the due date for this payment.

20 c. Within two (2) years after the Effective Date, Settling
21 Defendants shall pay to the United States nine hundred thirty-three thousand three
22 hundred thirty-three dollars (\$933,333), plus Interest on that amount calculated
23 from the 30th Day after the Effective Date until the date of the payment. The
24 United States shall provide Settling Defendants with information on the amount of
25 Interest due thirty (30) Days before the due date for this payment.

26 The payments to be made by Settling Defendants set forth above are for
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1 reimbursement and/or payment of response costs.

2 6. Payment Instructions

3 a. Any payments due the United States on behalf of EPA pursuant
4 to Section VI (Settlement of Response Costs) shall be made in accordance with
5 instructions provided to such Settling Defendant(s) by EPA or the Financial
6 Litigation Unit (“FLU”) of the United States Attorney’s Office for the Central
7 District of California.

8 b. At the time of each installment payment required by Paragraph
9 5, Settling Defendants shall send notice to DOJ and EPA that payment has been
10 made in accordance with Section XVI (Notices and Submissions), and to the EPA
11 Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail
12 to:

13
14 EPA Cincinnati Finance Office
15 26 Martin Luther King Drive
16 Cincinnati, Ohio 45268

17 Such notice shall reference the Site/Spill ID Number 09JW, and DOJ Case
18 Number 90-11-2-09952.

19 c. The total amount to be paid to the United States on behalf of
20 EPA pursuant to Section VI (Settlement of Response Costs) shall be used to
21 conduct or finance response actions at or in connection with the Site, which may
22 include transferring all or some of those payments to a disbursement special
23 account associated with the Final Remedial Action, and/or shall be transferred by
24 EPA to the EPA Hazardous Substance Superfund.

25 **VII. ACCESS AND INSTITUTIONAL CONTROLS**

26 7. Settling Defendants shall:

27 a. commencing on the date of lodging of this Consent Decree, and
28 at no charge, provide the United States and its representatives (including EPA and

1 its contractors), and any PRPs conducting response actions at the Site under EPA
2 oversight (including, without limitation, the Settling Work Defendant in any other
3 consent decree the United States on behalf of EPA has entered into or shall enter
4 into the Consolidated Federal Action, as well as their agents and contractors), with
5 access at all reasonable times, and, where feasible, with three (3) working days'
6 notice, to the KTI Property for the purpose of conducting any response actions
7 related to the Site including, but not limited to, the following activities:

- 8 (1) Monitoring of investigation, removal, remedial, or other
9 response actions at the Site;
- 10 (2) Verifying any data or information submitted to the
11 United States;
- 12 (3) Conducting investigations relating to contamination at or
13 near the Site;
- 14 (4) Obtaining samples;
- 15 (5) Assessing the need for, planning, or implementing
16 additional response actions at or near the Site;
- 17 (6) Inspecting and copying records, operating logs, contracts,
18 or other documents maintained or generated by Settling Defendants or their agents,
19 consistent with Section IX (Access to Information);
- 20 (7) Assessing Settling Defendants' compliance with this
21 Consent Decree;
- 22 (8) Determining whether the Site, the KTI Property, or other
23 property is being used in a manner that is prohibited or restricted, or that may need
24 to be prohibited or restricted, by or pursuant to this Consent Decree;
- 25 (9) (a) Implementing removal or remedial actions as selected
26 by EPA, including but not limited to capping of the KTI Property or Site, or any
27 portion(s) thereof, and implementing, monitoring, maintaining, reporting on, and
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1 enforcing any Institutional Controls; (b) installing, monitoring, and maintaining
2 liquid, groundwater, soil gas and other wells or probes; and (c) installing,
3 monitoring, and operating any monitoring and extraction system, including liquids
4 and gas extraction systems.

5 b. commencing on the date of lodging of this Consent Decree,
6 refrain from using the KTI Property in any manner that would interfere with or
7 adversely affect the implementation, integrity, or protectiveness of the remedial
8 measures implemented pursuant to the 2010 ROD. Also commencing on the date
9 of lodging of this Consent Decree, Settling Defendants shall provide EPA thirty
10 (30) Days' notice if Settling Defendants intend to disturb subsurface soils or
11 sediments six (6) or more inches below ground surface in the portions of the KTI
12 Property identified in Appendix C. If, in the future, EPA issues any removal or
13 remedial decision document(s) related to the Site, Settling Defendants hereby agree
14 to refrain from using the KTI Property, or any portion thereof specifically
15 identified in any future removal or remedial decision, in any manner that would
16 interfere with or adversely affect the implementation, integrity, or protectiveness of
17 those future measures to be implemented at the Site. Settling Defendants also
18 hereby agree to implement any Institutional Control(s), including but not limited to
19 land or water use restrictions, that may be selected by EPA for the Site or the KTI
20 Property, or any portion(s) thereof, in any removal or remedial action affecting the
21 KTI Property, or any portion(s) thereof.

22 c. execute and record in the appropriate land records office
23
24 Proprietary Controls that: (i) grant a right of access to conduct any activity
25 regarding the Consent Decree and any future removal or remedial action
26 concerning the Site including, but not limited to, those activities listed in Paragraph
27 7.a; and (ii) grant the right to enforce any land/water use restrictions required by
28 Paragraph 7.b, including, but not limited to, any land/water use restrictions listed in

1 any future Institutional Control Implementation and Assurance Plan, as further
2 specified in this Paragraph 7.c. The Proprietary Controls shall be granted to one or
3 more of the following persons, as determined by EPA: (i) the United States, on
4 behalf of EPA, and its representatives; (ii) the State and its representatives; (iii)
5 any Settling Work Defendant(s) in any other consent decree the United States on
6 behalf of EPA has entered into or shall enter into in the Consolidated Federal
7 Action and their representatives; and/or (iv) other appropriate grantees. The
8 Proprietary Controls, other than those granted to the United States, shall include a
9 designation that EPA (and/or the State as appropriate) is a third-party beneficiary,
10 allowing EPA to maintain the right to enforce the Proprietary Controls without
11 acquiring an interest in real property. If any Proprietary Controls are granted to
12 Settling Defendants pursuant to this Paragraph 7.c, then such Settling Defendants
13 shall monitor, maintain, report on, and enforce such Proprietary Controls.

14 8. If EPA determines that Institutional Controls on the KTI Property,
15 including, but not limited to, environmental restriction covenants under state or
16 local laws, regulations, ordinances, or other governmental controls, are needed to
17 implement any removal or remedial action selected by EPA, ensure the integrity
18 and protectiveness thereof, ensure non-interference therewith, or otherwise protect
19 public health or welfare and the environment, Settling Defendants shall cooperate
20 with EPA's efforts to secure such Institutional Controls and/or governmental
21 controls.

22 9. Notwithstanding any provision of this Consent Decree, the United
23 States retains all of its information gathering, inspection, and access authorities and
24 rights, as well as all of its rights to require land use restrictions, including
25 enforcement authorities related thereto, under CERCLA, RCRA, and any other
26 applicable statute or regulations.

27 10. Modification of the Land Use Restrictions

28 a. If EPA determines that modifications or additions to the

1 land/water use restrictions are necessary to carry out and maintain the effectiveness
2 of any removal or remedial action, EPA may require that such modifications or
3 additions be incorporated in the land/water use restrictions, provided, however, that
4 a modification or addition may only be required pursuant to this Paragraph to the
5 extent that it is consistent with the scope of the removal or remedial action selected
6 by EPA.

7 b. If Settling Defendants object to any modification or addition
8 determined by EPA to be necessary pursuant to this Paragraph, they may seek
9 dispute resolution pursuant to Section XI (Dispute Resolution), Paragraph 23
10 (Record Review). The land/water use restrictions shall be modified in accordance
11 with final resolution of the dispute.

12 c. Settling Defendants shall implement any land/water use
13 restrictions required by any modifications or additions incorporated in the
14 land/water use restrictions in accordance with this Paragraph.

15 d. Nothing in this Paragraph shall be construed to limit EPA's
16 authority to require performance of further response actions as otherwise provided
17 in this Consent Decree.

18
19 **VIII. NOTICE TO SUCCESSORS-IN-TITLE AND TRANSFERS OF REAL**
20 **PROPERTY**

21 11. Settling Defendant shall, at least sixty (60) days prior to any Transfer
22 of any real property located at the Site, give written notice: (1) to the transferee
23 regarding the Consent Decree and any Institutional Controls regarding the real
24 property; and (2) to EPA and the State regarding the proposed Transfer, including
25 the name and address of the transferee and the date on which the transferee was
26 notified of the Consent Decree and any Institutional Controls.

27 12. Settling Defendants may Transfer any real property located at the Site
28 only if: (1) any Proprietary Controls required by Paragraph 7.c have been recorded

1 with respect to the real property; or (2) Settling Defendants have obtained an
2 agreement from the transferee, enforceable by Settling Defendants and the United
3 States, to (i) allow access and restrict land/water use, consistent with Paragraphs
4 7.a and 7.b, (ii) record any Proprietary Controls on the real property, consistent
5 with Paragraph 7.c, and (iii) subordinate its rights to any such Proprietary Controls,
6 consistent with Paragraph 7.c, and EPA has approved the agreement in writing. If,
7 after a Transfer of the real property, the transferee fails to comply with the
8 agreement provided for in this Paragraph 12, Settling Defendants shall take all
9 reasonable steps to obtain the transferee's compliance with such agreement. The
10 United States may seek the transferee's compliance with the agreement and/or
11 assist Settling Defendants in obtaining compliance with the agreement. Settling
12 Defendants shall reimburse the United States for all costs incurred, direct or
13 indirect, by the United States regarding obtaining compliance with such agreement,
14 including, but not limited to, the cost of attorney time.

15
16 13. In the event of any Transfer of real property located at the Site, unless
17 the United States otherwise consents in writing, Settling Defendants shall continue
18 to comply with their obligations under the Consent Decree, including, but not
19 limited to, their obligation to provide and/or secure access, to implement, maintain,
20 monitor, and report on Institutional Controls, and to abide by such Institutional
21 Controls.

22 IX. ACCESS TO INFORMATION

23
24 14. Settling Defendants shall provide to EPA and the State, upon request,
25 copies of all records, reports, documents, and other information (including records,
26 reports, documents, and other information in electronic form) (hereinafter referred
27 to as "Records") within their possession or control or that of their contractors or
28 agents relating to activities at the Site or to the implementation of this Consent

Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the KTI Property or the Site. Settling Defendants shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the Site.

15. Business Confidential and Privileged Documents

a. Settling Defendants may assert business confidentiality claims covering part or all of the Records submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA and the State, or if EPA has notified Settling Defendants that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Settling Defendants.

b. Settling Defendants may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege in lieu of providing Records, they shall provide Plaintiffs with the following: (1) the title of the Record; (2) the date of the Record; (3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the Record; (4) the name and title of each addressee and recipient; (5) a description of the contents of the Record; and (6) the privilege asserted by Settling Defendants. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States in redacted form to mask the privileged portion only. Settling Defendants shall retain all

1 Records that they claim to be privileged until the United States has had a
2 reasonable opportunity to dispute the privilege claim and any such dispute has
3 been resolved in the Settling Defendants' favor.

4 c. No Records created or generated pursuant to the requirements
5 of this Consent Decree shall be withheld from the United States or the State on the
6 grounds that they are privileged or confidential.

7 16. No claim of confidentiality or privilege shall be made with
8 respect to any data, including, but not limited to, all sampling, analytical,
9 monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other
10 documents or information evidencing conditions at or around the Site.

11 **X. RETENTION OF RECORDS**

12 17. By signing this Consent Decree Settling Defendants hereby severally
13 certify that they have as of February 29, 2012, produced in the Consolidated
14 Federal Action all non-identical and non-privileged copies of records, reports, or
15 information in their possession or control (if any) that relate in any manner to
16 response actions taken at the B.F. Goodrich Superfund Site or the liability of any
17 person under CERCLA with respect to the B.F. Goodrich Superfund Site. Except
18 for those documents that have been produced in the Consolidated Federal Action
19 as described in the preceding sentence, each Settling Defendant shall preserve and
20 retain all non-identical copies of records, reports, or information (hereinafter
21 referred to as "Records") now in its possession or control, or that come into its
22 possession or control, that relate in any manner to response actions taken at the
23 B.F. Goodrich Superfund Site or the RABSP Site, or its or any other person's
24 liability under CERCLA with respect to the B.F. Goodrich Superfund Site or
25 RABSP Site, until ten (10) years after EPA's Certification of Completion of the
26 Final Remedial Action. Each Settling Defendant must also retain, and instruct its
27
28

1 contractors and agents to preserve, for the same period of time specified above, all
2 non-identical copies of the last draft or final version of any Records (including
3 Records in electronic form) now in its possession or control or that come into its
4 possession or control that relate in any manner to the implementation of
5 Institutional Controls, provided, however, that each Settling Defendant (and its
6 contractors and agents) must retain, in addition, copies of all data generated during
7 the implementation of Institutional Controls, if any, that are not contained in the
8 aforementioned Records required to be retained. Each of the above record
9 retention requirements shall apply regardless of any corporate retention policy to
10 the contrary.

11
12 18. After the conclusion of the document retention period in the preceding
13 Paragraph, each Settling Defendant shall notify EPA and DOJ at least ninety (90)
14 days prior to the destruction of any such Records, and, upon request by EPA or
15 DOJ, each Settling Defendant shall deliver any such Records to EPA. Each
16 Settling Defendant may assert that certain Records are privileged under the
17 attorney-client privilege or any other privilege recognized by federal law. If a
18 Settling Defendant asserts such a privilege in lieu of providing Records, it shall
19 provide Plaintiffs with the following: (a) the title of the Record; (b) the date of the
20 Record; (c) the name, title, affiliation (*e.g.*, company or firm), and address of the
21 author of the Record; (d) the name and title of each addressee and recipient; (e) a
22 description of the subject of the Record; and (f) the privilege asserted. If a claim of
23 privilege applies only to a portion of a Record, the Record shall be provided to the
24 United States in redacted form to mask the privileged portion only. Such Settling
25 Defendant shall retain all Records that it claims to be privileged until the United
26 States has had a reasonable opportunity to dispute the privilege claim and any such
27 dispute has been resolved in such Settling Defendant's favor. However, no
28 Records created or generated pursuant to the requirements of this Consent Decree

1 or any other settlement with EPA pertaining to the RABSP Site shall be withheld
2 from the United States on the grounds that they are privileged or confidential.

3 19. Each Settling Defendant certifies individually that, to the best of its
4 knowledge and belief, after thorough inquiry, it has not altered, mutilated,
5 discarded, destroyed, or otherwise disposed of any Records (other than identical
6 copies) relating to its potential liability regarding the Site since the earlier of
7 notification of potential liability by the United States or the State or the filing of
8 suit against it regarding the Site and that it has fully complied with any and all
9 EPA and State requests for information regarding the Site pursuant to Sections
10 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section
11 3007 of RCRA, 42 U.S.C. § 6927, and state law.
12

13 **XI. DISPUTE RESOLUTION**

14 20. Unless otherwise expressly provided for in this Consent Decree, the
15 dispute resolution procedures of this Section shall be the exclusive mechanism to
16 resolve disputes regarding this Consent Decree. However, the procedures set forth
17 in this Section shall not apply to actions by the United States to enforce obligations
18 of Settling Defendants that have not been disputed in accordance with this Section.

19 21. Any dispute regarding this Consent Decree shall in the first instance
20 be the subject of informal negotiations between the parties to the dispute. The
21 period for informal negotiations shall not exceed twenty (20) days from the time
22 the dispute arises, unless it is modified by written agreement of the parties to the
23 dispute. The dispute shall be considered to have arisen when one party sends the
24 other parties a written Notice of Dispute.

25 **22. Statements of Position**

26 a. In the event that the parties cannot resolve a dispute by informal
27 negotiations under the preceding Paragraph, then the position advanced by EPA
28 shall be considered binding unless, within thirty (30) days after the conclusion of

1 the informal negotiation period, Settling Defendants invoke the formal dispute
2 resolution procedures of this Section by serving on the United States a written
3 Statement of Position on the matter in dispute, including, but not limited to, any
4 factual data, analysis, or opinion supporting that position and any supporting
5 documentation relied upon by Settling Defendants. The Statement of Position
6 shall specify Settling Defendants' position as to whether formal dispute resolution
7 should proceed under Paragraph 23 (Record Review) or 24.

8 b. Within thirty (30) days after receipt of Settling Defendants'
9 Statement of Position, EPA will serve on Settling Defendants its Statement of
10 Position, including, but not limited to, any factual data, analysis, or opinion
11 supporting that position and all supporting documentation relied upon by EPA.
12 EPA's Statement of Position shall include a statement as to whether formal dispute
13 resolution should proceed under Paragraph 23 (Record Review) or Paragraph 24.
14 Within thirty (30) days after receipt of EPA's Statement of Position, Settling
15 Defendants may submit a Reply.

16 c. If there is disagreement between EPA and Settling Defendants
17 as to whether dispute resolution should proceed under Paragraph 23 (Record
18 Review) or 24, the parties to the dispute shall follow the procedures set forth in the
19 paragraph determined by EPA to be applicable. However, if Settling Defendants
20 ultimately appeal to the Court to resolve the dispute, the Court shall determine
21 which paragraph is applicable in accordance with the standards of applicability set
22 forth in Paragraphs 23 and 24.

23 23. Record Review. Formal dispute resolution for disputes pertaining to
24 the selection or adequacy of any response action and all other disputes that are
25 accorded review on the administrative record under applicable principles of
26 administrative law shall be conducted pursuant to the procedures set forth in this
27 Paragraph. For purposes of this Paragraph, the adequacy of any response action
28 includes, without limitation, the adequacy or appropriateness of plans, procedures

1 to implement plans, or any other items requiring approval by EPA under this
2 Consent Decree, and the adequacy of the performance of response actions taken
3 pursuant to this Consent Decree. Nothing in this Consent Decree shall be
4 construed to allow any dispute by Settling Defendants regarding the validity of the
5 ROD's provisions.

6 a. An administrative record of the dispute shall be maintained by
7 EPA and shall contain all statements of position, including supporting
8 documentation, submitted pursuant to this Section. Where appropriate, EPA may
9 allow submission of supplemental statements of position by the parties to the
10 dispute.

11 b. The Director of the Superfund Division, EPA Region IX, will
12 issue a final administrative decision resolving the dispute based on the
13 administrative record described in Paragraph 23.a. This decision shall be binding
14 upon Settling Defendants, subject only to the right to seek judicial review pursuant
15 to Paragraphs 23.c and 23.d.

16 c. Any administrative decision made by EPA pursuant to
17 Paragraph 23.b shall be reviewable by this Court, provided that a motion for
18 judicial review of the decision is filed by Settling Defendants with the Court and
19 served on all Parties within ten (10) days after receipt of EPA's decision. The
20 motion shall include a description of the matter in dispute, the efforts made by the
21 parties to resolve it, the relief requested, and the schedule, if any, within which the
22 dispute must be resolved to ensure orderly implementation of this Consent Decree.
23 The United States may file a response to Settling Defendants' motion.

24 d. In proceedings on any dispute governed by this Paragraph,
25 Settling Defendants shall have the burden of demonstrating that the decision of the
26 Superfund Division Director is arbitrary and capricious or otherwise not in
27 accordance with law. Judicial review of EPA's decision shall be on the
28 administrative record compiled pursuant to Paragraph 23.a.

1 24. Formal dispute resolution for disputes that neither pertain to the
2 selection or adequacy of any response action nor are otherwise accorded review on
3 the administrative record under applicable principles of administrative law, shall be
4 governed by this Paragraph.

5 a. Following receipt of Settling Defendants' Statement of Position
6 submitted pursuant to Paragraph 22, the Director of the Superfund Division, EPA
7 Region IX, will issue a final decision resolving the dispute. The Superfund
8 Division Director's decision shall be binding on Settling Defendants unless, within
9 ten (10) days after receipt of the decision, Settling Defendants file with the Court
10 and serve on the parties a motion for judicial review of the decision setting forth
11 the matter in dispute, the efforts made by the parties to resolve it, the relief
12 requested, and the schedule, if any, within which the dispute must be resolved to
13 ensure orderly implementation of the Consent Decree. The United States may file
14 a response to Settling Defendants' motion.

15 b. Notwithstanding Paragraph C (CERCLA Section 113(j) Record
16 Review of Response Actions) of Section I (Background), judicial review of any
17 dispute governed by this Paragraph shall be governed by applicable principles of
18 law.

19 25. The invocation of formal dispute resolution procedures under this
20 Section shall not extend, postpone, or affect in any way any obligation of Settling
21 Defendants under this Consent Decree, not directly in dispute, unless EPA or the
22 Court agrees otherwise. Stipulated penalties with respect to the disputed matter
23 shall continue to accrue but payment shall be stayed pending resolution of the
24 dispute as provided in Paragraph 27. Notwithstanding the stay of payment,
25 stipulated penalties shall accrue from the first day of noncompliance with any
26 applicable provision of this Consent Decree. In the event that Settling Defendants
27 do not prevail on the disputed issue, stipulated penalties shall be assessed and paid
28 as provided in Paragraph 27 (Stipulated Penalties).

XII. FAILURE TO COMPLY WITH CONSENT DECREE OBLIGATIONS

26. Interest on Payments and Accelerated Payments. If Settling Defendants fail to make any payment required by Section VI (Settlement of Response Costs) by the required due date, Interest shall accrue on the unpaid balance owed by Settling Defendants from the date payment is due through the date of payment, and all remaining installment payments and all accrued Interest shall become due immediately upon such failure. Interest and stipulated penalties shall continue to accrue on any unpaid amounts until the total amount due has been received. However, if Settling Defendants cure a delinquency by making a late payment to EPA within thirty (30) days of the required due date, including all of the then-accrued Interest and stipulated penalties as provided for in Paragraph 27, below, then further stipulated penalties shall cease to run as of the date the late payment is received, and Settling Defendants may make future payments to EPA pursuant to the schedule provided in Section VI (Settlement of Response Costs), above.

27. Stipulated Penalties

a. If any amounts due the United States are not paid by their respective required date(s), Settling Defendants shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 26, five thousand dollars (\$5,000) per violation per day to the United States for each day such payment is late.

b. If Settling Defendants do not comply with the access and/or Institutional Controls provisions of Section VII, Settling Defendants shall be in violation of this Consent Decree and shall pay to the United States, as a stipulated penalty, five thousand dollars (\$5,000) per violation per day of such noncompliance.

1 c. Stipulated penalties are due and payable within thirty (30) days
2 after the date of the demand for payment of the penalty or penalties. All payments
3 of stipulated penalties owed to the United States under this Paragraph shall be
4 identified as “stipulated penalties” and shall be made in accordance with
5 instructions provided to such Settling Defendant(s) by the United States. Such
6 payment shall reference Site/Spill ID Number 09JW, and DOJ Case Number 90-
7 11-2-09952. At the time of payment of a stipulated penalty for nonpayment to the
8 United States as described in Paragraph 27.a, the non-paying or late-paying
9 Settling Defendant(s) shall send notice to DOJ and EPA that payment has been
10 made in accordance with Section XVI (Notices and Submissions). Such notice
11 shall reference Site/Spill ID Number 09JW, and DOJ Case Number 90-11-2-
12 09952.

13
14 d. Penalties shall accrue as provided in this Paragraph regardless
15 of whether the United States has notified Settling Defendant(s) of the violation or
16 made a demand for payment, but need only be paid upon demand. All penalties
17 shall begin to accrue on the day after payment is due and shall continue to accrue
18 through the date of payment. Nothing in this Consent Decree shall prevent the
19 simultaneous accrual of separate penalties for separate violations of this Consent
20 Decree.

21 28. Payments made under this Section shall be in addition to any other
22 remedies or sanctions available to the United States by virtue of Settling
23 Defendants’ failure to comply with the requirements of this Consent Decree.

24 29. Notwithstanding any other provision of this Section, the United States
25 may, in its unreviewable discretion, waive payment of any portion of the stipulated
26 penalties due to the United States pursuant to this Consent Decree. Payment of
27 stipulated penalties shall not excuse Settling Defendants from payment as required
28 by Section VI (Settlement of Response Costs) or from performance of any other

1 requirements of this Consent Decree.

2 **XIII. COVENANTS AND RESERVATIONS OF RIGHTS BY PLAINTIFFS**

3 30. Covenants by the United States on Behalf of EPA. Except as
4 specifically provided in Paragraphs 31-34, the United States on behalf of EPA
5 covenants not to sue or to take administrative action against Settling Defendants
6 pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a)
7 and Section 7003 of RCRA, 42 U.S.C. § 6973, relating to the B.F. Goodrich
8 Superfund Site. With respect to present and future response costs, these covenants
9 shall take effect upon receipt by Plaintiffs of all amounts required by Paragraph 5
10 and any Interest or stipulated penalties due thereon under Section XII (Failure to
11 Comply with Consent Decree Obligations). These covenants are conditioned upon
12 the satisfactory performance by Settling Defendants of their obligations under this
13 Consent Decree, including but not limited to, payment of all amounts due under
14 Section VI (Settlement of Response Costs), and any Interest or stipulated penalties
15 due thereon under Section XII (Failure to Comply with Consent Decree
16 Obligations). These covenants extend only to Settling Defendants and do not
17 extend to any other person.
18

19 31. United States' Pre-certification Reservations. Notwithstanding any
20 other provision of this Consent Decree, the United States reserves, and this
21 Consent Decree is without prejudice to, the right to institute proceedings in this
22 action or in a new action, or to issue an administrative order, seeking to compel
23 Settling Defendant(s):

- 24 1) to perform further response actions relating to the B.F.
25 Goodrich Superfund Site; or
26 2) to reimburse the United States for additional costs of
27 response if, prior to Certification of Completion of the Final Remedial Action for
28

1 the B.F. Goodrich Superfund Site:

2 i. conditions at the B.F. Goodrich Superfund Site,
3 previously unknown to EPA, are discovered, or

4 ii. information, previously unknown to EPA, is
5 received, in whole or in part,

6 and EPA determines that these previously unknown conditions or information
7 together with any other relevant information indicates that the B.F. Goodrich
8 Superfund Site Final Remedial Action is not protective of human health or the
9 environment.

10 32. United States' Post-certification Reservations. Notwithstanding any
11 other provision of this Consent Decree, the United States reserves, and this
12 Consent Decree is without prejudice to, the right to institute proceedings in this
13 action or in a new action, or to issue an administrative order, seeking to compel
14 Settling Defendant(s):

15 1) to perform further response actions relating to the B.F.
16 Goodrich Superfund Site; or

17 2) to reimburse the United States for additional costs of
18 response if, subsequent to Certification of Completion of the Final Remedial
19 Action for the B.F. Goodrich Superfund Site:

20 i. conditions at the B.F. Goodrich Superfund Site,
21 previously unknown to EPA, are discovered, or

22 ii. information, previously unknown to EPA, is
23 received, in whole or in part,

24 and EPA determines that these previously unknown conditions or information
25 together with any other relevant information indicates that the B.F. Goodrich
26 Superfund Site Final Remedial Action is not protective of human health or the
27 environment.
28

1 33. For purposes of Paragraph 31, the information and the conditions
2 known to EPA shall include only that information and those conditions known to
3 EPA as of the date the Final Record of Decision is signed and set forth in the Final
4 Record of Decision and the administrative record supporting the Final Record of
5 Decision. For purposes of Paragraph 32, the information and the conditions known
6 to EPA shall include only that information and those conditions known to EPA as
7 of the date of Certification of Completion of the Final Remedial Action and set
8 forth in the Final Record of Decision, the administrative record supporting the
9 Final Record of Decision, the post-Final Record of Decision administrative record,
10 or in any information required to be submitted to EPA during the conduct of the
11 remedial design and remedial action, prior to the Certification of Completion of the
12 Final Remedial Action.

13
14 34. General Reservations of Rights. The United States on behalf of EPA
15 and the federal natural resource trustee reserves, and this Consent Decree is
16 without prejudice to, all rights against Settling Defendants with respect to all
17 matters not expressly included within the Covenants by the United States in
18 Paragraph 30. Notwithstanding any other provision of this Consent Decree, the
19 United States on behalf of EPA and the federal natural resource trustee reserves all
20 rights against Settling Defendants with respect to:

21 a. claims based on a failure by Settling Defendants to meet their
22 requirements under this Consent Decree;

23 b. liability arising from the past, present, or future disposal,
24 release, or threat of release of Waste Material outside of the B.F. Goodrich
25 Superfund Site;

26 c. liability based on the ownership or operation of any portion of
27 the B.F. Goodrich Superfund Site by Settling Defendants when such ownership or
28 operation commences after signature of this Consent Decree and does not arise

1 solely out of performance of the Work;

2 d. liability based on Settling Defendants' transportation,
3 treatment, storage, or disposal, or the arrangement for the transportation, treatment,
4 storage, or disposal of Waste Material at or in connection with the B.F. Goodrich
5 Superfund Site, other than as provided in the 2010 ROD, the Work, or otherwise
6 ordered by EPA, after signature of this Consent Decree;

7 e. liability for damages for injury to, destruction of, or loss of
8 natural resources, and for the costs of any natural resource damage assessments;

9 f. criminal liability;

10 g. liability for violations of federal or state law which occur
11 during or after implementation of the Work.
12

13 **XIV. COVENANTS AND RESERVATIONS OF RIGHTS BY SETTLING**
14 **DEFENDANTS AND SETTLING FEDERAL AGENCIES**

15 35. Except as provided in Paragraph 36, Settling Defendants covenant not
16 to sue and agree not to assert any claims or causes of action against the United
17 States on behalf of EPA, or its contractors or employees, with respect to the B.F.
18 Goodrich Superfund Site and this Consent Decree, including, but not limited to:

19 a. any direct or indirect claim for reimbursement from the
20 Hazardous Substance Superfund (established pursuant to the Internal Revenue
21 Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113,
22 or any other provision of law;

23 b. any claims against the United States, including any department,
24 agency, or instrumentality of the United States under CERCLA Sections 107 or
25 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding, the B.F.
26 Goodrich Superfund Site, response actions at the Site, response costs incurred at
27 the Site, and this Consent Decree;
28

1
2 c. any claims arising out of response actions at or in connection
3 with the B.F. Goodrich Superfund Site relating to the United States, including any
4 claim under the United States Constitution, the California Constitution, the Tucker
5 Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as
6 amended, or at common law;

7 d. any claim, whether express or deemed by court order, in the
8 Consolidated Federal Action; and

9 e. any direct or indirect claim for disbursement from the B.F.
10 Goodrich Superfund Site Special Account.

11
12 36. These covenants and releases shall not apply to the United States in
13 the event the United States brings a cause of action or issues an order pursuant to
14 any of the reservations set forth in Paragraphs 31-34, other than in Paragraph 34.a
15 (liability for failure to meet a requirement of the Consent Decree) or 34.f (criminal
16 liability), but only to the extent that Settling Defendants' claims arise from the
17 same response action, response costs, or damages that the United States is seeking
18 pursuant to the applicable reservation.

19 37. Nothing in this Consent Decree shall be deemed to constitute approval
20 or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42
21 U.S.C. § 9611, or 40 C.F.R. §300.700(d).

22 38. Except as provided in Paragraph 40, each of the Settling Defendants
23 releases and covenants not to sue or take administrative action against any of the
24 Settling Federal Agencies, and each of the Settling Federal Agencies releases and
25 covenants not to sue or take administrative action against any of the Settling
26 Defendants, pursuant to Sections 107(a) or 113 of CERCLA, 42 U.S.C. §§ 9607(a)
27 and 9613, Section 7002 of RCRA, 42 U.S.C. § 6972, or any other state or federal
28 statute or state or federal common law with respect to all claims of any kind,

1 known and unknown, in connection with the alleged release or threatened release
2 of any of the Basin Contaminants at, on, or under the RABSP Site. With respect to
3 present and future liability, these covenants and releases shall take effect upon
4 receipt by Plaintiffs of all payment amounts required by Paragraph 5 and any
5 Interest or stipulated penalties due thereon under Section XII (Failure to Comply
6 with Consent Decree Obligations).

7 39. In releasing all unknown claims, each of the Settling Defendants and
8 the Settling Federal Agencies waives the provisions of Section 1542 of the
9 California Civil Code which provides:
10

11 A general release does not extend to claims which the creditor does
12 not know or suspect to exist in his or her favor at the time of
13 executing the release, which if known by him or her must have
materially affected his or her settlement with the debtor.

14 40. Each of the Settling Defendants and Settling Federal Agencies
15 reserves, and this Consent Decree is without prejudice to, all rights against the
16 Settling Defendants and Settling Federal Agencies with respect to:

- 17 a. liability of the breaching Party for its failure to meet a
18 requirement of this Consent Decree;
19 b. liability based on the ownership or operation of any portion of
20 the RABSP Site when such ownership or operation commences after lodging of
21 this Consent Decree and there is a new release of a Waste Material on or related to
22 such property;
23 c. liability based on transportation, treatment, storage, or disposal,
24 or arrangement for transportation, treatment, storage, or disposal of a Waste
25 Material at or in connection with the RABSP Site, after lodging of this Consent
26 Decree;
27
28

1 d. liability arising from the past, present, or future disposal,
2 release, or threat of release of a Waste Material outside of the RABSP Site;

3 e. liability arising from the release, threat of release, or disposal of
4 a Waste Material either within or outside of the RABSP Site, where such release,
5 threat of release, or disposal occurs after the lodging of this Consent Decree;

6 f. liability arising from past, present, or future releases or
7 threatened releases at the RABSP Site, where the Waste Material at issue is not a
8 Basin Contaminant;

9 g. liability related to bodily injury; and

10 h. claims for contribution whether based on federal or state
11 statutes or common law arising out of: (1) claims in *City of Riverside v. Black &*
12 *Decker (U.S.), Inc., et al.*, Case No. BC410878; (2) claims asserted by any person
13 or entity that was not a party to the Consolidated Federal Action on August 24,
14 2012; or, (3) claims for natural resource damages.
15

16 For purposes of subparagraphs b., c., and e. of this Paragraph, migration of existing
17 Waste Material is not a new release or disposal of Waste Material into soil,
18 groundwater, or atmosphere.

19 41. Further Settlers. Settling Defendants agree that in the event that: (a)
20 the United States, on behalf of EPA, reaches or has reached settlement with any
21 other party to the Consolidated Federal Action who is not a signatory to this
22 Consent Decree ("Further Settlor"); and (b) the United States, on behalf of EPA,
23 gives notice in accordance with Section XVI (Notices and Submissions) to Settling
24 Defendants that such party has become a Further Settlor; then upon Court approval
25 of that Further Settlor's settlement, Settling Defendants commit that they shall
26 extend to any such Further Settlor identical releases and covenants not to sue and
27 waiver to those set forth in Paragraphs 38 and 39, without further monetary
28

1 consideration for such covenants and waiver, subject to the reservations of rights in
2 Paragraph 40, and in exchange for mutual releases of claims and appeals by that
3 Further Settlor against Settling Defendants substantially similar to the releases and
4 covenants not to sue and waiver set forth in Paragraphs 38 and 39. The
5 commitments of Settling Defendants to provide such covenants not to sue, subject
6 to the reservation of rights, in the foregoing sentence shall not take effect as to any
7 Future Settlor unless and until the settlement with such Future Settlor becomes a
8 final judgment following any appeal. The United States, on behalf of EPA, has
9 sole discretion to determine whether a party is to be deemed a "Further Settlor" for
10 purposes of this Paragraph.
11

12 42. Claims Against Other Parties in the Consolidated Federal Action.
13 Settling Defendants agree not to assert any claims and to waive all claims or causes
14 of action (including but not limited to claims or causes of action under Sections
15 107(a) and 113 of CERCLA) or any other federal or state law that they may have
16 for response costs relating to the B.F. Goodrich Superfund Site and/or the West
17 Side Site against each other or any other person who is or was a party in the
18 Consolidated Federal Action. This waiver shall not apply with respect to any
19 defense, claim, or cause of action that a Settling Defendant may have against any
20 person if such person asserts a claim or cause of action relating to the B.F.
21 Goodrich Superfund Site and/or the West Side Site against such Settling
22 Defendant.

23 43. Settling Defendants' Agreement Regarding Recovery Under Federal
24 Contracts. Each Settling Defendant hereby agrees that it shall not in the future
25 seek or receive any portion of any amount it has agreed to pay in this Consent
26 Decree, through any Federal Contract. Pursuant to this Paragraph, each Settling
27 Defendant expressly acknowledges that it is prohibited from including any portion
28 of the payments made pursuant to this Consent Decree as either direct or indirect

1 costs, or otherwise, in any invoice, claim, or demand associated with any Federal
2 Contract.

3 **XV. EFFECT OF SETTLEMENT/CONTRIBUTION**

4 44. Except as provided in Paragraph 42, nothing in this Consent Decree
5 shall be construed to create any rights in, or grant any cause of action to, any
6 person not a Party to this Consent Decree. Except as provided in Section XIV
7 (Covenants and Reservations of Rights by Settling Defendants and Settling Federal
8 Agencies), each of the Parties expressly reserves any and all rights (including, but
9 not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses,
10 claims, demands, and causes of action which it may have with respect to any
11 matter, transaction, or occurrence relating in any way to the RABSP Site against
12 any person not a Party hereto. Nothing in this Consent Decree diminishes the right
13 of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C.
14 § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or
15 response action and to enter into settlements that give rise to contribution
16 protection pursuant to Section 113(f)(2).
17

18 45. The Parties agree, and by entering this Consent Decree this Court
19 finds, that this settlement constitutes a judicially approved settlement for purposes
20 of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling
21 Defendants are entitled, as of the Effective Date, to protection from contribution
22 actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be
23 otherwise provided by law, for “matters addressed” in this Consent Decree. The
24 “matters addressed” in this Consent Decree are all response actions taken or to be
25 taken and all response costs incurred or to be incurred at or in connection with the
26 B.F. Goodrich Superfund Site or the West Side Site by the United States or any
27 other person; provided, however, that if the United States on behalf of EPA
28

1 exercises any of the reservations in Section XIII (Covenants and Reservations of
2 Rights by Plaintiffs), other than in Paragraphs 34.a (liability for failure to meet a
3 requirement of Consent Decree) or 34.f (criminal liability), the “matters addressed”
4 in this Consent Decree will no longer include those response costs or response
5 actions that are within the scope of the exercised reservation. Nothing in this
6 Paragraph shall limit or affect the ability of any Settling Defendant and/or Settling
7 Federal Agency to exercise their reservations of rights as to each other in
8 Paragraph 40.

9
10 46. The Parties further agree, and by entering this Consent Decree this
11 Court further finds, that the payments and obligations provided for in this Consent
12 Decree represent a good faith compromise of disputed claims and that the
13 compromise represents a fair, reasonable, and equitable resolution. With regard to
14 any claims for costs, damages, or other claims against the Parties, the Parties agree
15 and this Court finds that Settling Defendants are entitled to contribution protection
16 pursuant to the California Code of Civil Procedure §§ 877 and 877.6, and any other
17 applicable provision of federal or state law, whether by statute or common law.

18 47. The Parties intend the broadest possible protection from contribution
19 actions provided by law for “matters addressed” in this Consent Decree.

20 48. Each Settling Defendant shall, with respect to any suit or claim
21 brought by it for matters related to this Consent Decree after the date the Consent
22 Decree is lodged with the Court, notify EPA and DOJ in writing no later than sixty
23 (60) days prior to the initiation of such suit or claim. Each Settling Defendant also
24 shall, with respect to any suit or claim brought against it for matters related to this
25 Consent Decree, notify EPA and DOJ in writing within ten (10) days after service
26 of the complaint or claim upon it. In addition, each Settling Defendant shall notify
27 EPA and DOJ within ten (10) days after service or receipt of any motion for
28

1 summary judgment, and within ten (10) days after receipt of any order from a court
2 setting a case for trial, for matters related to this Consent Decree.

3 49. In any subsequent administrative or judicial proceeding initiated by
4 the United States for injunctive relief, recovery of response costs, or other relief
5 relating to the B.F. Goodrich Superfund Site, Settling Defendants shall not assert,
6 and may not maintain, any defense or claim based upon the principles of waiver,
7 res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses
8 based upon any contention that the claims raised by the United States in the
9 subsequent proceeding were or should have been brought in the instant case;
10 provided, however, that nothing in this Paragraph affects the enforceability of the
11 covenants not to sue set forth in Sections XIII and XIV (Covenants and
12 Reservations of Rights).

13 14 **XVI. NOTICES AND SUBMISSIONS**

15 50. Whenever, under the terms of this Consent Decree, notice is required
16 to be given or a document is required to be sent by one party to another, it shall be
17 directed to the individuals at the addresses specified below, unless those
18 individuals or their successors give notice of a change to the other Parties in
19 writing. Written notice as specified in this Section shall constitute complete
20 satisfaction of any written notice requirement of the Consent Decree with respect
21 to the United States, EPA, and each Settling Defendant, respectively.

22 23 As to the United States:

24 Chief, Environmental Enforcement Section
25 Environment and Natural Resources Division
26 U.S. Department of Justice
27 P.O. Box 7611
28 Washington, DC 20044-7611
Re: DJ # 90-11-2-09952

-and-

Chief, Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Re: DJ # 90-11-6-17144/1

As to EPA:

Remedial Project Manager, B.F. Goodrich Site
Wayne Praskins
United States Environmental Protection Agency
Region 9
75 Hawthorne St.
San Francisco, CA 94105

As to Ken Thompson, Inc.; KTI, Incorporated; Pipeline Carriers, Inc.; and Rialto Concrete Products, Inc:

Ralph Delorea
KTI, Incorporated
3011 N. Laurel Ave.
Rialto, CA 92377
Telephone: (909) 434-1888
Email: rdeloera@ktipipe.com

-and-

Keith A. Kelly, Esq.
Law Offices of Keith A. Kelly
7095 Indiana Ave., Ste. 200
Riverside, CA 92506
Telephone: (951) 684-7066
Email: keith.kelly@kakellylaw.com

XVII. RETENTION OF JURISDICTION

51. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVIII. INTEGRATION/APPENDICES

52. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following

1 appendices are attached to and incorporated into this Consent Decree:

2 “Appendix A” is the map of the RABSP, including the 160-Acre Area, the
3 Stonehurst Property, and the County Property.

4 “Appendix B” includes the legal descriptions and assessor’s map of the
5 parcels comprising the KTI Property.

6 “Appendix C” is a map depicting the portions of the KTI Property for which
7 EPA will require thirty (30) Days’ notice from Settling Defendants if Settling
8 Defendants intend to disturb the subsurface soils or sediments six (6) or more
9 inches below ground surface.

10
11 **XXIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

12 53. This Consent Decree shall be lodged with the Court for a period of not
13 less than thirty (30) days for public notice and comment. The United States
14 reserves the right to withdraw or withhold its consent if the comments regarding
15 the Consent Decree disclose facts or considerations that indicate that this Consent
16 Decree is inappropriate, improper, or inadequate. Settling Defendants consent to
17 the entry of this Consent Decree without further notice.

18 54. If for any reason this Court’s entry of the Consent Decree is reversed
19 on appeal, in whole or material part, this Consent Decree is voidable at the sole
20 discretion of any Party and the terms of the Consent Decree may not be used as
21 evidence in any litigation between the Parties.

22 **XX. FINAL JUDGMENT**

23
24 55. The United States and Settling Defendants agree, and this Court by
25 entering this Consent Decree finds, that this Consent Decree has been negotiated
26 by the Parties in good faith, that settlement of this matter will avoid prolonged and
27 complicated litigation between the Parties, and that this Consent Decree is fair,
28 reasonable, and in the public interest.

1 56. The Court finds that there is no just reason for delay of entry of this
2 Consent Decree, and therefore enters this judgment as a final judgment under Fed.
3 R. Civ. P. 54 and 58.

4
5 SO ORDERED THIS 2nd DAY OF July, 2013.

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8 HONORABLE PHILIP S. GUTIERREZ
9 United States District Judge
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1 FOR THE UNITED STATES OF AMERICA:

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4 Dated: 3/22/13


By: 

5 IGNACIA S. MORENO
6 Assistant Attorney General
7 Environment and Natural Resources
8 Division
9 United States Department of Justice
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1 FOR THE UNITED STATES OF AMERICA:

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3
4 Dated: March 26, 2013

By:



5 DEBORAH A. GITIN

6 Senior Counsel

7 United States Department of Justice

8 Environment and Natural Resources

9 Division

10 Environmental Enforcement Section

11 301 Howard St., Suite 1050

12 San Francisco, CA 94105

1 FOR THE UNITED STATES OF AMERICA:

2
3
4 Dated: 3/25/13

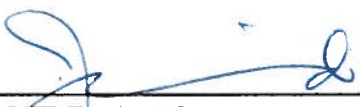
By:




5 MARK A. RIGAU
6 Senior Trial Counsel
7 United States Department of Justice
8 Environmental and Natural Resources
9 Division
10 Environmental Defense Section
11 301 Howard St., Suite 1050
12 San Francisco, CA 94105
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FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Dated: 3/22/2013

By: 
JANE DIAMOND
Director, Superfund Division, Region IX
U.S. Environmental Protection Agency
75 Hawthorne St.
San Francisco, California 94105

Dated: March 8, 2013

By: 
THOMAS B. BUTLER
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region IX
75 Hawthorne St.
San Francisco, California 94105

1 FOR KEN THOMPSON, INC.; KTI, INCORPORATED; PIPELINE CARRIERS,
2 INC.; AND RIALTO CONCRETE PRODUCTS:
3
4
5
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7
8 Dated:

2/15/13

By:

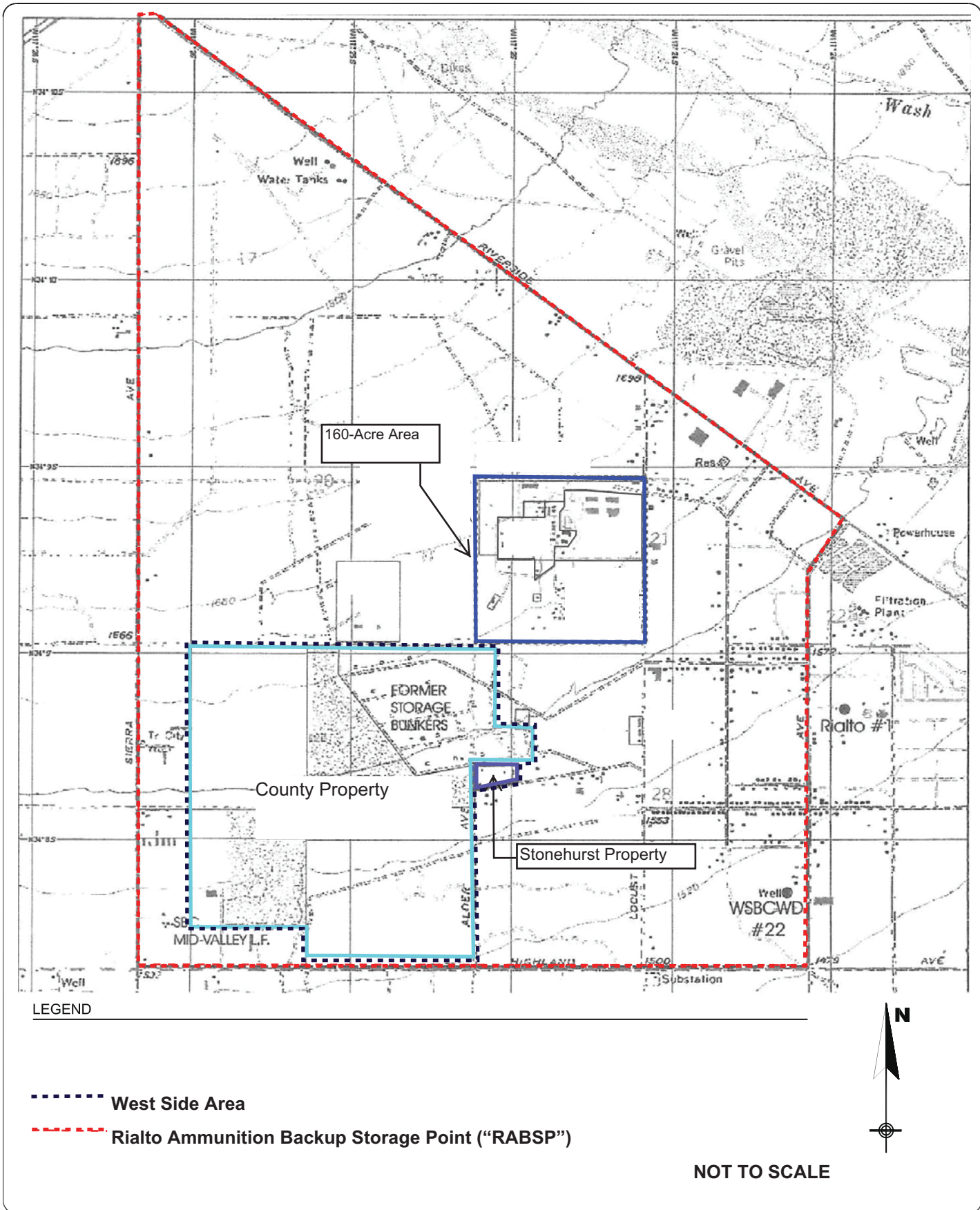


RALPH DELOERA
Chief Financial Officer
KTI, Incorporated
3011 N. Laurel Ave.
Rialto, CA 92377

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CONSENT DECREE

Appendix A



Appendix B

APN 0239-192-05-0000

Legal Description

The following real property in the City of Rialto, San Bernardino County, State of California, described as:

Parcel 12 of the Parcel Map No. 7173, City of Rialto, County of San Bernardino, State of California, as per map recorded in Book 77, Page(s) 64 to 68 of Maps, in the office of the County Recorder of said County.

APN 0239-192-11-0000

Legal Description

The following real property in the City of Rialto, San Bernardino County, State of California, described as:

Parcel 6 of the Parcel Map No. 7173, City of Rialto, County of San Bernardino, State of California, as per map recorded in Book 77, Page(s) 64 to 68 of Maps, in the office of the County Recorder of said County.

APN 0239-192-19-0000

Legal Description

The following real property in the City of Rialto, San Bernardino County, State of California, described as:

Parcel 11 of the Parcel Map No. 7173, City of Rialto, County of San Bernardino, State of California, as per map recorded in Book 77, Page(s) 64 to 68 of Maps, in the office of the County Recorder of said County, TOGETHER WITH the Westerly 136.00 feet of Parcel 10 of Parcel Map 7173.

APN 0239-192-20-0000

Legal Description

The following real property in the City of Rialto, San Bernardino County, State of California, described as:

Parcel 10 of the Parcel Map No. 7173, City of Rialto, County of San Bernardino, State of California, as per map recorded in Book 77, Page(s) 64 to 68 of Maps, in the office of the County Recorder of said County, EXCEPTING THEREFROM the Westerly 136.00 feet thereof.

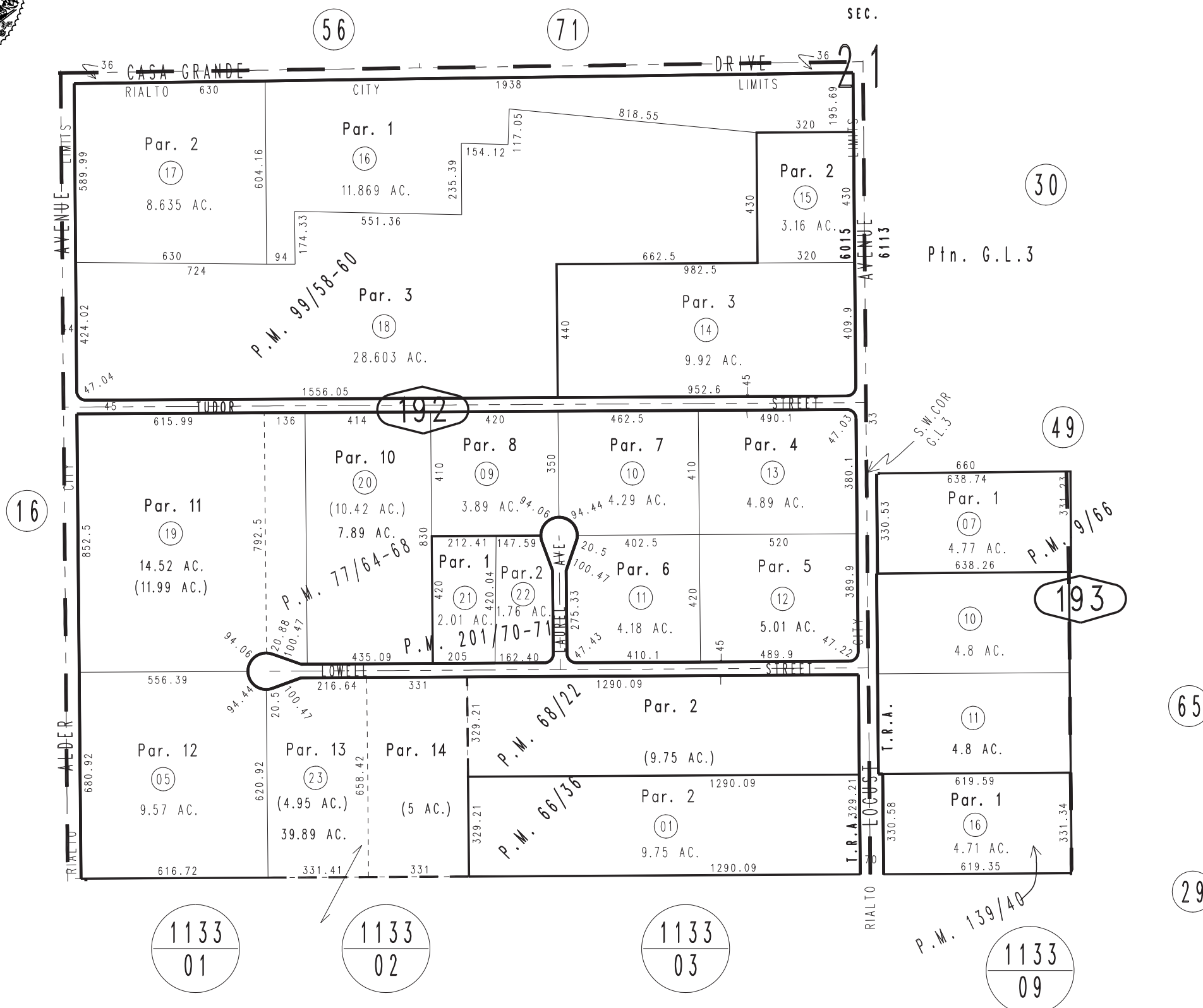
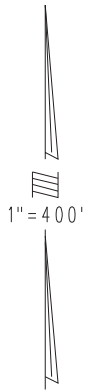
APN 0239-192-09-0000

Legal Description

The following real property in the City of Rialto, San Bernardino County, State of California, described as:

Parcel 8 of the Parcel Map No. 7173, City of Rialto, County of San Bernardino, State of California, as per map recorded in Book 77, Page(s) 64 to 68 of Maps, in the office of the County Recorder of said County.

0239 - 19



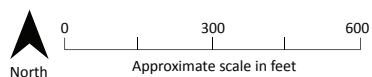
Assessor's Map
Book 0239 Page 19
San Bernardino County

Appendix C

Appendix C to the Consent Decree by and between the United States and Ken Thompson, Inc., et al.



Aerial image © Google Earth, 2013. Annotation by CH2M HILL, 2013.



Areas where Settling Defendants should provide EPA notice if they intend to disturb subsurface soils.